

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5678

By Delegates Toney, Statler, Ellington, Dittman,

Cooper, and Roop

[Introduced February 17, 2026; referred to the

Committee on Finance]

1 A BILL to amend and reenact §5B-2L-16 of the Code of West Virginia, 1931, as amended, relating
2 to the Build WV Act; replacing the project cost with a cap on new tax credit liability;
3 clarifying that the cost cap applies only to new project approvals; allowing credit for smaller
4 projects in rural areas; requiring periodic review and adjustment to reflect demand and
5 usage; and establishing a Build WV credit reserve fund, adjusted annually

Be it enacted by the Legislature of West Virginia:

ARTICLE 2L. BUILD WV ACT.

§5B-2L-16. Project application; evaluation standards; approval of projects.

1 (a) Each eligible company or group of multiple party project participants that seeks
2 certification of a proposed project as a certified BUILD WV project ~~must~~ shall file a written
3 application for approval and certification of the project with the Department of Economic
4 Development.

5 (b) With respect to each eligible company or group of multiple party project participants
6 making an application to the Department of Economic Development seeking certification of a
7 proposed project as a certified BUILD WV project the Department of Economic Development shall
8 make inquiries and request documentation, including a completed application, from the applicant
9 that shall include the following:

10 (1) A description and location of the proposed project;

11 (2) Capital and other anticipated expenditures for the project and the sources of funding
12 therefor;

13 (3) The anticipated employment, revenues and expenses generated by the project; and

14 (4) Anything else determined necessary by the Department of Economic Development.

15 (c) ~~The aggregate sum of approved costs for all projects for any fiscal year shall not exceed~~
16 ~~\$150 million. Any project application submitted for certification in the fiscal year after the sum of~~
17 ~~\$150 million has been reached shall not be approved or certified. Notwithstanding any other~~
18 ~~provision of this code, for any fiscal year,~~

19 ~~the~~ The aggregate amount of property value adjustment tax credits authorized for award
20 under this article may not exceed \$2 million in new project approvals per fiscal year, based on the
21 estimated date of project completion as declared by the applicant in their approved certification.
22 This cap shall apply only to credits authorized for projects first approved during the fiscal year in
23 question and may not include credits previously allocated to projects approved in prior years.

24 At the time of application, each project shall provide an anticipated date of completion. The
25 Department of Economic Development shall allocate a tax credit reservation for that project to the
26 fiscal year of estimated completion and may not approve additional new projects for that fiscal year
27 once the estimated cumulative credit liability reaches \$2 million.

28 The estimated property value adjustment tax credit shall be calculated at the time of project
29 approval using the credit formula outlined in §5B-2L-10 of this code. For the purposes of
30 estimating the property value adjustment tax credit under §5B-2L-10 of this code, the value used
31 for the statewide average Class III property tax rate shall be the average of the published
32 statewide Class III property tax rates for the three calendar years immediately preceding the date
33 of project approval. This average shall be used solely for administrative estimation and fiscal cap
34 compliance purposes and may not affect the final credit awarded, which shall still be calculated
35 using the actual Class III rate for the year in which the project is completed.

36 The Department may allow applicants to amend the estimated completion year prior to
37 project completion, subject to availability under the revised fiscal year's credit cap.

38 The fiscal cap established in this subsection shall be reviewed and revised, as appropriate,
39 by the Department of Economic Development at least once every five years, based on program
40 participation, demonstrated demand, and actual usage trends across approved projects.

41 A Build WV Credit Reserve Fund shall be created and maintained in the State Treasury.
42 The fund shall be used exclusively to support the refundable portion of the property value
43 adjustment tax credits authorized under §5B-2L-11 of this code.

44 The Reserve Fund shall be capitalized initially at \$2 million and replenished annually to

45 ensure availability for refund claims associated with completed Build WV projects. The
46 Department of Economic Development shall determine an appropriate funding level each year
47 based on the number of completed projects, anticipated claims, and historical refund utilization
48 trends.

49 The Department shall manage the allocation and oversight of the Reserve Fund and shall
50 publish an annual report outlining the fund's balance, projected obligations, and any potential
51 shortfall risk. The Legislature may appropriate additional funds as needed to address increases in
52 program participation or actual refund demands.

53 The Secretary of the Department of Economic Development may not approve any single
54 proposed project as a certified BUILD WV project for the fiscal year unless the proposed project
55 has an aggregate sum of approved costs that is at least \$3 million or the proposed project includes
56 at least six residential units or houses.

57 However, a project located in a designated rural area may be approved by the Secretary
58 with aggregate certified costs below \$3 million or fewer than six residential units, if the project
59 otherwise meets the requirements of subsection (d) of this section and demonstrates a substantial
60 positive economic or community impact.

61 "Rural area" means any county or municipality that is not part of a Metropolitan Statistical
62 Area as defined by the United States Office of Management and Budget, or that meets other rural
63 characteristics as determined by the state's Department of Economic Development, including but
64 not limited to low population density, distance from urban centers, or housing scarcity.

65 (d) The Secretary of the Department of Economic Development, within 60 days following
66 receipt of an application or receipt of any additional information requested by the Department of
67 Economic Development respecting the application, whichever is later, shall act to grant or not to
68 grant certification of the project, based on the following criteria:

69 (1) The project will have approved costs of at least \$3 million or includes at least six
70 residential units or houses; except that, for projects located in a rural area as defined by §5B-2L-2

71 of this code or as otherwise designated by the Secretary, these thresholds may be reduced.

72 (2) The project will have a significant and positive economic impact on the state;

73 (3) The quality of the proposed project and how it addresses economic problems in the
74 area in which the project will be located;

75 (4) Whether there is substantial and credible evidence that the project is likely to be started
76 and completed in a timely fashion;

77 (5) Whether the project will, directly or indirectly, improve the opportunities in the area
78 where the project will be located for the successful establishment or expansion of other
79 commercial businesses;

80 (6) Whether the project will, directly or indirectly, assist in the creation of additional
81 employment opportunities in the area where the project will be located;

82 (7) Whether the project helps to diversify the local economy;

83 (8) Whether the project is consistent with the goals of this article;

84 (9) Whether the project is economically and fiscally sound using recognized business
85 standards of finance and accounting;

86 (10) Whether the proposed project demonstrates that the project will meet the immediate
87 future needs of the area; and

88 (11) The ability of the eligible company or group of multiple party project participants to
89 carry out the project.

90 (e) Exclusions.

91 (1) In no case shall may any property or space that is used, in whole or in part, as a
92 residential timeshare, commercial timeshare, or as part of any similar arrangement, constitute
93 certified project property, or any part thereof.

94 (2) In no case shall may any property or space that is used in whole or in part as an
95 industrial or manufacturing operation, constitute certified project property, or any part thereof.

96 (3) In no case shall may any property or space that is used in whole or in part as a

97 warehouse, distribution center, telephone call center, or telemarketing operation, constitute
98 certified project property, or any part thereof.

99 (4) In no case ~~shall~~ may any property or space that is used, in whole or in part, as an airport
100 constitute certified project property, or any part thereof.

101 (5) In no case ~~shall~~ may any property or space that is used primarily for business activity,
102 business, or other operation or activity excluded from certification by the Department of Economic
103 Development by rule or administrative notice, constitute certified project property, or any part
104 thereof.

105 (f) The Department of Economic Development may establish additional criteria for
106 consideration when evaluating and approving applications for certified BUILD WV housing
107 projects.

108 (g) The decision by the Secretary of the Department of Economic Development as to
109 certification of a proposed project, refusal to certify a proposed project, decertification, or
110 revocation of certification of a project is final.

NOTE: The purpose of this bill is to replace the Build WV project cost with a cap on new tax credit liability. The bill clarifies that the cost cap applies only to new project approvals; allows credit for smaller projects in rural areas; requires periodic review and adjustment to reflect demand and usage; and establishes a Build WV credit reserve fund adjusted annually.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.